



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. _____

RUDOLPH MEJIA, ET AL.,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

BRIEF IN SUPPORT OF PETITION

FIRST POINT

THE DECISION BELOW IS IN CONFLICT WITH
EARLIER DECISIONS IN THE FIRST AND
SECOND CIRCUIT.

In *New England Maritime Co. v. United States*, 55
F. 2d 674 D. C. Mass., on the opinion below, 73 F. 2d 1016
C. C. A. 1, suits were brought under the Public Vessels Act
for the death of three members of the crew of the schooner

Mills sunk in collision with the destroyer Childs and who lost their lives by drowning.

In construing the Public Vessels Act the District Court at page 685 says:

"The Government in its answer has claimed that the words in the Public Vessels Act, 'for damages caused by a public vessel of the United States,' are not applicable where a person has suffered death by reason of a collision.

"I think the libelants in these death cases are correct in saying that a broad construction should be placed upon this act, that it was obviously the purpose of the act to waive the sovereign's immunity with respect to accidents on the high seas caused by public vessels, and thereby relieve Congress of the multiplicity of special acts necessary to compensate persons who had suffered damages either to their person or property. The statute is remedial, and, under well-settled practice of statutory construction, should be liberally construed.

"I do not understand that counsel for the government finds any fault with this broad construction given to the statute, but raises only the question that the loss of Pogson, Captain Chaney, and the cook was not the direct result of the negligence of the Childs, assuming such negligence to exist, but was rather the result of an intervening cause."

In the case of *Dobson v. United States*, 27 F. 2d 807, C. C. A. 2 Cir., a libel was filed by the legal representa-

tives (for the benefit of the widower and children) of a deceased naval officer who lost his life by the sinking of the United States submarine S-51 in collision with the City of Rome, a privately owned vessel. At page 807 the court in part says:

“Appellee, on the other hand, argues that the statute should be construed as limiting recovery to damages to property and not contemplating compensation for loss of life. We do not find it necessary to determine this question in the present case. The phrase ‘damages caused by a public vessel of the United States’ would seem sufficient to include loss of life occasioned by the unseaworthy condition of the ship, even though this operates through the intermediation of collision with another vessel, and it may be assumed *arguendo* that, were the suit brought for the death of a passenger or member of the crew of the City of Rome, caused by the collision, we would sustain it; * * *”

While recovery was denied it was not on the ground that the word “damage caused by a public vessel of the United States” did not include claims for death but was on the ground that the government had made provisions for reimbursing those in the Naval services for such claims.

SECOND POINT

PUBLIC VESSELS ACT CREATED RIGHTS

The Public Vessels Act, 46 U. S. C. A. 781 *et seq.* created rights that did not exist prior to its enactment. This is evidenced by 781 of said act and which in provides that:

"A libel in personam in admiralty may be brought against the United States, * * * for damages caused by a public vessel of the United States * * *"

Paragraph 782 providing for the venue in suits thereunder in part provides:

"782 Such suits shall be brought in the district court of the United States *in which the vessel charged with creating the liability is found.*" (Emphasis supplied.)

The provision of the Suits in Admiralty Act, 46 U. S. C. A. 741 and its venue provisions are differently worded. Paragraph 742 in part reads:

"In case where if such vessel were privately owned or operated * * * a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States * * * provided that such vessel is employed as a merchant vessel * * Such suit shall be brought in the district * * * in which *the vessel or cargo charged with liability is found.*" (Emphasis supplied.)

If Congress intended the words of Public Vessels Act "* * damages caused by a public vessel of the United States" to include claims for death then the holding of the Circuit Court of Appeals that: (R. 29)

"There is no statute in admiralty allowing claims

for death upon navigable waters within any state except as to seamen.”
is clearly erroneous.

THIRD POINT UNIFORMITY REQUIRED

If under the Public Vessels Act *supra*, in death claims the state death statute must be looked to for a cause of action, then this statutory admiralty proceeding and with respect to whether or not under the state statute contributory negligence is a bar to recovery, the time within which suits should be instituted under this admiralty statute would be left to the varying provisions of the state statutes. In the case of *Engel v. Davenport*, 271 U. S. 33, the court at page 39 says:

“In The Panama R. Co. Case, p. 392, it was held that the contention that the Merchant Marine Act did not possess the uniformity in operation essential to its validity as a modification of the maritime law, was unfounded, since the Employers’ Liability Act, which it adopted, had a uniform operation, which could not be deflected from ‘by local statutes or local views of common-law rules.’ The period of time within which an action may be commenced is a material element in such uniformity of operation. And plainly, Congress, in incorporating the provisions of the Employers’ Liability Act into the Merchant Marine Act, did not intend to exclude a provision so material, and to permit the uniform operation of the Merchant Marine Act to be destroyed by the varying provisions of the state statutes of limitation.”

As the essential features of an exclusive federal jurisdiction is involved in the Public Vessels Act uniformity in its interpretation is required. *Just v. Chambers*, 312 U. S. 383.

Respectfully submitted,

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